ATTORNEY FOR APPELLANT:

SHANA D. LEVINSON
Levinson & Levinson
Merrillville, Indiana

ATTORNEY FOR APPELLEE:

YOLANDA HOLDEN
Robert L. Lewis & Associates
Gary, Indiana

IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF E.N., Minor Child, and DAWN NOWAK, Mother	)	
DAWN NOWAK Appellant-Respondent,	)	
vs.	)	No. 45A03-0702-JV-77
LAKE COUNTY DEPARTMENT OF CHILD SERVICES Appellee-Petitioner.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Mary Beth Bonaventura, Judge
Cause No. 45D06-0603-JT-30

September 28, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Respondent Dawn Nowak appeals the termination of her parental rights to E.N. Upon appeal, Nowak makes four claims, which we consolidate and restate as the following two: (1) whether the trial court abused its discretion in finding reasonable efforts at reunification were not required pursuant to Indiana Code section 31-34-21-5.6 (2005); and (2) whether sufficient evidence supported the juvenile court's termination of her parental rights. We affirm.

FACTS

Nowak has a long history of drug abuse, which has led to her longtime involvement with Lake County Department of Child Services ("LCDCS"). In 1993, 1994, and 2002, Nowak's children, Jessica and Rachel, were wards of LCDCS due to Nowak's drug abuse. LCDCS again became involved with Nowak in September 2002 with respect to her son Z.Z. after he was born testing positive for cocaine. According to case manager Kenneth Vanscoyk, who initially handled Z.Z.'s case after he had been placed in foster care, Nowak received services, including an in-home drug screening program and parenting counseling sessions. Vanscoyk testified that Nowak initially cooperated and that Z.Z. was placed back into her care for approximately two months in January 2003. On March 24, 2003, however, he was removed again due to Nowak's return to her cocaine habit. Apparently on April 5, 2004, the court ordered that Z.Z. be returned to Nowak for a two-week transitional period, but Nowak failed to pick Z.Z. up, and Vanscoyk was unable to locate Nowak until June 15th of that year. According to Vanscoyk, Nowak was also in violation of a court order requiring that she not have contact with Z.Z.'s father. Vanscoyk placed a drug screening program in Nowak's home,

which she failed to use. Due to Nowak's return to drugs and her unhealthy relationships, the goal in Z.Z.'s case became termination of Nowak's parental rights to Z.Z. Nowak's parental rights to Z.Z. were terminated on October 5, 2005. In that termination order, the juvenile court noted as part of its observation regarding Nowak's ongoing drug habit that Nowak had given birth to another child in May of 2005 who had tested positive for cocaine. That child was E.N.

E.N. was born on May 20, 2005 to Nowak and Jerry Wolotka.[1] Following E.N.'s release from the hospital with Nowak, LCDCS removed E.N. from Nowak's custody after meconium tests revealed that E.N. tested positive for cocaine. Nowak admitted to using cocaine the first four months of her pregnancy. E.N. was placed in foster care, and she has remained with this same family since her removal.

According to LCDCS case manager Gloria Person, at the time of the June 14, 2005 detention hearing order, services were offered to Nowak, including counseling, parenting classes, and random drug screens through Metropolitan Oasis. Additionally, as a part of this order, Nowak was required to have six months of negative drug screens before E.N. would be returned to her custody. Beginning in approximately July 2005, Nowak did not respond to either Person's attempts or to those of Metropolitan to contact her. After attempting to contact Nowak without success on July 11, July 18, and July 25, Metropolitan set an August 4, 2005 deadline, after which it would seek to withdraw services. One day after the deadline, on August 5, Nowak contacted Metropolitan, and it began providing her services including counseling, parenting classes, and drug screens on

[1] Wolotka voluntarily relinquished his rights, and he is not a party to this appeal.

August 19, 2005. According to Person, Nowak complied with these services beginning in approximately September 2005, and she passed all of their drug screens.

E.N. was found to be a Child in Need of Services ("CHINS") on November 2, 2005. Person testified that at the January 13, 2006 dispositional hearing, she recommended a goal of termination, in spite of Nowak's compliance at the time with services, due to the termination of Nowak's rights to Z.Z. and her history of recurring drug use. In the January 13 dispositional order, the court adopted a permanency plan including a goal of termination of parental rights. In ordering this goal of termination, the court found that reasonable efforts to reunify E.N. with Nowak were not required because Nowak's rights to E.N.'s biological sibling had been terminated on October 5, 2005. Services were terminated as of the date of the January 13 disposition order.

On March 2, 2006, LCDCS filed a petition to terminate Nowak's parental rights to E.N.[2] Fact-finding hearings were held on October 18, October 24, 2006, and January 10, 2007. Testimony at those hearings indicated that since approximately September 2005, Nowak was employed, was enrolled in college classes, and attended church. Multiple tests indicated she was drug-free, although a January 13, 2006 test was positive for cocaine. In a January 10, 2007 order, the juvenile court found that the conditions resulting in E.N.'s removal would not be remedied, that there was a reasonable probability that the continuation of the parent-child relationship posed a threat to E.N.'s well-being, and that termination was in E.N.'s best interests. Accordingly the court terminated Nowak's parental rights to E.N. This appeal follows.

[2] The petition to terminate parental rights does not appear to be in the record.

DISCUSSION AND DECISION

Nowak contends upon appeal that the trial court abused its discretion in determining that reasonable efforts at reunification were not required. She further challenges the sufficiency of the grounds upon which the juvenile court terminated her parental rights.

Upon reviewing the termination of parental rights, we do not reweigh the evidence or judge the witness credibility. *Castro v. State Office of Family and Children*, 842 N.E.2d 367, 372 (Ind. Ct. App. 2006), *trans. denied*. We consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id*. Here, the juvenile court entered findings of fact and conclusions of law in granting the petition of LCDCS to terminate Novak's parental rights. When reviewing findings of fact and conclusions of law entered in a case involving a termination of parental rights, we apply a two-tiered standard of review. *Id*. First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Id*. We will set aside the trial court's judgment only if it is clearly erroneous. *Id*. A judgment is "'clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment.'" *Id*. (quoting *Bester v. Lake County Office of Family and Children*, 839 N.E.2d 143, 147 (Ind. 2005) (internal quotation omitted)).

Indiana Code section 31-35-2-4(b)(2) provides that a petition to terminate parental rights must allege, in pertinent part, the following:

> (A) one (1) of the following exists:
> (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

(ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or

(iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is a reasonable probability that:

(i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or

(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

The Department of Child Services must prove each of these elements by clear and convincing evidence. Ind. Code § 31-37-14-2 (2006); *In re D.L.*, 814 N.E.2d 1022, 1026 (Ind. Ct. App. 2004), *trans. denied*.

We first address Nowak's claim that the trial court abused its discretion in determining that reasonable efforts for family reunification were not required. Pursuant to Indiana Code section 31-34-21-5.6(b)(4), reasonable efforts to reunify a child with the child's parent are not required if the court finds that "the parental rights of a parent with respect to a biological or adoptive sibling of a child who is a child in need of services have been involuntarily terminated by a court . . . ." We note that Nowak does not challenge the validity of the termination of her parental rights to Z.Z. while E.N. was in the midst of CHINS proceedings. Here, due to the termination of Nowak's parental rights to Z.Z., the court determined that reasonable efforts were not required for purposes

of terminating Nowak's parental rights to E.N. The court was authorized to make this finding at any point during the CHINS proceeding under Indiana Code section 31-34-21-5.6(a) and (b)(4).

To the extent Nowak is claiming that this provision violates the fundamental right of family integrity, our court addressed this claim in *G.B. v. Dearborn County Div. of Family and Children*, 754 N.E.2d 1027, 1029-33 (Ind. Ct. App. 2001), *trans. denied*, observing that while a parent has a fundamental right to raise her child, such right is not unlimited in light of the State's compelling interest to protect the welfare of children. Upon concluding that Indiana Code section 31-34-21-5.6 served a compelling state interest and was narrowly tailored to serve that interest, we concluded it was not unconstitutional. *G.B.*, 754 N.E.2d at 1032. Accordingly, we find no merit to Nowak's challenge to the trial court's determination that reasonable efforts at reunification were unnecessary in the instant case. Further, as such a determination is an alternative to the required finding that the child has been removed from the home for at least six months under a dispositional decree, we find no merit in Nowak's claim of error on the basis that the juvenile court failed to find E.N. had been removed for at least six months.

As to the sufficiency of the evidence to support the termination, we observe that in spite of Nowak's claims to being drug-free since September 2005, such claims do not erase her long history of chronic drug abuse and her accompanying neglect of her children as a result. Not unlike her pattern of conduct involving Z.Z., Nowak used cocaine during her pregnancy with E.N., and following E.N.'s birth, she showed a lack of interest, in spite of multiple notices, in pursuing the services offered to her to regain

custody of her child. Given Nowak's past involvement with LCDCS, she would not have been unaware of the severe consequences accompanying the failure to comply with services.

While we acknowledge and applaud the efforts Nowak has since made to change her life, the juvenile court was within its discretion, given Nowak's history, to view Nowak's ability to maintain these changes with some skepticism, especially in light of their potential effect on E.N.'s placement and well-being. E.N. has been in foster care with her brother, Z.Z., since her removal, and she has bonded with foster parents who intend to adopt both her and Z.Z. Additionally, in spite of Nowak's claims of reform, she tested positive for cocaine in January 2006, and her live-in boyfriend has a history of cocaine abuse as well. Accordingly, we find no clear error in the juvenile court's attributing more weight to Nowak's multi-year history of drug abuse than to her recently improved lifestyle, and its finding that there was a reasonable probability that the conditions resulting in the removal of E.N. from Nowak's home would not be remedied.[3] *See Prince v. Dep't of Child Serv.*, 861 N.E.2d 1223, 1229 (Ind. Ct. App. 2007) (observing, upon affirming termination of parental rights in spite of Mother's sobriety and compliance with services at time of termination, that a trial court must evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child).

The judgment of the juvenile court is affirmed.

[3] As Nowak acknowledges, having found grounds for termination on one basis, we need not address the sufficiency of the evidence to support the termination of parental rights on an alternative ground. *See In re J.W.*, 779 N.E.2d 954, 962 (Ind. Ct. App. 2002), *trans. denied*.

NAJAM, J., and MATHIAS, J., concur.